IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1596 of 2004

Mohammed Hussain .. Petitioner/Defacto Complainant

vs.

1.The State Rep by
The Inspect of Police,
Kallakurichi Police Station,
Kallakurichi.

2. Nasar Ali .. Respondents/Complainant & Accused

Prayer: This Revision petition has been preferred against judgment dated 5.3.2004 made in S.C.No.3 of 2003 on the file of the Assistant Sessions Judge, Kallakurichi.

For Petitioner : Mr.S.A.Ajmalkhan

For Respondents : Mr.V.R.Balasubramanian
Additional Public Prosecutor (for R1)

Ms.J.S.Dharmadevi (for R2)

JUDGMENT

This revision petition has been preferred against the judgment in S.C.No.3 of 2003 on the file of the Assistant Sessions Judge, Kallakurichi. This revision has been preferred against the order of acquittal of the single accused, who is facing the charge under Section 306 IPC.

2. On the basis of the complaint preferred by P.W.1, the father of the victim girl, P.W.21 the then Sub-Inspector of Police, Kallakurichi, had registered a case in Cr.No.61 of 2001 under Section 174(3) of Cr.P.C. Ex.P.8 is the FIR. P.W.22, the successor of P.W.21, took up further investigation and visited the place of occurrence and prepared observation mahazar-Ex.P.3 in the presence of P.W.11 & 12 and had drawn a rough sketch and also seized M.Os.10 to 19 under Ex.P.4-mahazar in the presence of

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the same witnesses. he had conducted inquest on the dead body of the victim. Ex.P.11 is the inquest report. The body of the victim was sent for autopsy through P.W.14.

3.P.W.1 is the complainant and also the father of the victim, who would depose to the effect that the marriage between the accused and victim took place on 24.10.1993 at Kallakurichi and that there was no issues to the couple and that he learnt that the accused was impotent through his wife P.W.2 and that the accused had never allowed the victim to go to her grand-mother P.W.6's house situated in the same street. He would further depose that on one occasion he and his wife P.W.2 went to Kallakurichi on 19.1.2001 i.e., two weeks prior to the occurrence and he found the victim's lip in reddish colour and that on 1.2.2001 at about 15.45 hours he received a phone call from P.W.3 informing that smoke is emanating from the house of his brother-in-law where the victim was residing. Immediately he rushed to Kallakurichi with his wife (P.W.2) and his friend one Kannan and found his daughter lying dead and the body was found in charred condition.

4.P.W.2 is the mother of the victim. P.W.3 is an occurrence witness, who would depose that on the fateful day the victim went to the second floor of the house but she did not return thereafter and on suspicion P.W.3 went in search of the victim to the second floor but found the door of the room locked and smoke was emanating from the said room. P.W.3 raised distress call and with the help of the neighbours the door of the room was broke open and they went inside and saw the victim girl lying dead with burn injuries all over her body and that she has informed about the incident to P.W.1 over phone. According to P.W.3, P.W.1 on suspicion had lodged a complaint against his son-in-law/accused.

5.P.Ws.4 & 5 who are neighbours of P.W.3 would depose that they also saw the charred body of the victim in the second floor.

6.P.W.6 is the grand-mother of the victim, who had also informed about the incident to P.W.1 over phone.

7.P.Ws.7, 8, 13, 17 & 18 also speak about the occurrence. P.W.9 is a photographer, who had taken M.Os.1 to 9, positives & negatives.

8.P.W.22 has examined the witnesses and recorded their statements. P.W.17, who had conducted potency test on the accused issued Ex.P.5-report. P.W.20 is the doctor, who had conducted postmortem on the body of the victim and issued Ex.P.6-report. Thereafter P.W.22 has altered the charge from Section

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174(3) Cr.P.C., to Section 306 IPC and arrested the accused and produced before the Judicial Magistrate on 6.6.2001 at 12.00 hours for remand. After completing the formalities, P.W.22 has lodged the charge sheet against the accused under Section 306 IPC.

9.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C, the accused had denied his complicity with the crime. After going through the oral and documentary evidence, the learned Assistant Sessions Judge has come to the conclusion that the charge levelled against the accused has not been proved beyond any reasonable doubt and accordingly acquitted the accused from the charges levelled against him. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this revision.

10. Heard the learned counsel appearing for the complainant and for the accused(R2) and the learned Additional Public Prosecutor and considered their rival submissions.

11.It is really a pathetic case in which an unfortunate women had committed suicide by self-immolation, 7 years and 2 months after her marriage with the accused. The charge against the accused is not under any dowry harassment or cruelty, but the charge is under Section 306 IPC in which it is the bounden duty of the prosecution to prove that the accused had induced the victim to commit suicide. The case was registered originally under Section 174(3) of Cr.P.C. Even though P.W.1 would allege that the victim was cruelly treated by the accused by saying that on one occasion the accused burnt her with hot iron rod on her thigh is bereft of any details before the trial Court. If that is so, as a father of the victim, he would not have kept quit for such a long time. Immediately the natural conduct of a person after hearing that her daughter has been cruelly ill-treated by her husband, he would have immediately lodged a complaint with the police or at least before the 'Jamath' for getting divorce from the accused. Through P.W.2 an another attempt was made in this case that the cruelty suffered at the hands of the accused by the victim was that he failed to consummate her after the marriage. It is an admitted case of the prosecution that the victim have lived with the accused for more than 7 years. It is seen from the evidence of P.W.2 that prior to few months from the date of occurrence both the accused and the victim had visited a foreign country and they were happy till then and only after the return from abroad the accused had failed to have sexual intercourse with the victim girl. The pertinent point to be noted here is that till her death the victim girl had not made any complaint either with the Jamath or with the police to the effect that she has been ill-treated by her husband or he had

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failed to consummate the marriage. No doubt, the couple have not been blessed with any issues. To show that the accused is potent he had subjected himself to a potency test before a competent medical officer, who had issued Ex.P.5-report certifying that the accused is potent. There is absolutely no evidence on record to show that the victim had subjected herself to any test to show that she is capable of bearing a child. No doubt it will be a very serious thing to be noted if an husband failed to consummate after marriage, if it is so, a wife would not have tolerated this for nearly 7 years. In this regard the evidence of P.W.2 was relied on by the complainant. According to P.W.1, P.W.2 the wife had informed him that the victim had informed her (P.W.2) that the accused had not consummated the marriage. But she would admit that till the couple went abroad they were maintaining cordial relationship including sexual intercourse. But only after the return from abroad the accused had failed to fulfill his matrimonial obligations to the victim. P.W.6 is the grand-mother of the victim, who had never been complaint of about the accused by the victim, except about her mental agony regarding her failur to bear a child. Apart from this there is absolutely nothing in the mind of the victim against the accused. The failure to make any complaint against the accused by P.W.1 & 2 and the victim about the ill-treatment or cruelty or the failure to perform the matrimonial obligations against the accused itself will go to show that the accused alone is responsible for the victim to take the extreme step of committing suicide. There is absolutely no evidence on record to show that only at the inducement of the accused the victim had committed suicide.

12.The learned counsel appearing for the revision petitioner relying on 2006(2) MLJ (Crl) 137 (Mohammed Modieen Vs. State, represented by Inspector of Polcie Sethur), contended that merely because the prosecution witnesses are relatives of the deceased, it cannot be said that their evidence is not trust worthy. The accused in that case faced the charge under Section 302 IPC wherein the prosecution relied on P.W.3, Mother of the deceased, P.W.4-sister of the deceased and also the husband of P.W.3 viz. Manivel. In the above cited case occurrence had taken place in the house of P.W.3 where the accused used to visit due to illicit intimacy with one of the daughters of P.W.3 viz. the victim. The occurrence had taken place in the presence of P.W.4, 2nd daughter of P.W.3 (sister of the victim). Only under such circumstances, this Court has held that since the prosecution witnesses are relatives of the deceased it cannot said that their evidence is not trust worthy or interested witnesses. Brushing aside the defence raised in that case that the prosecution has failed to examine any independent witnesses apart from the interested witnesses, who are all blood relation of the victim the accused

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was acquitted in that case. The facts of the above cited case will not be applicable to the present facts of the case. Here the accused is being charged under Section 306 IPC. The ingredients required for convicting the offence under Section 306 IPC is whether he has abetted the offence of suicide. P.W.1 & P.W.2 who are parents of the victim have not adduced any evidence to show that the accused had induced the victim to commit suicide. Under such circumstances, the above said ratio decidendi relied on by the learned counsel appearing for the revision petitioner will not be applicable to the present facts of the case.

13. Under such circumstances, the trial Court has come to the correct conclusion that there is no material on record to warrant conviction against the accused under Section 306 IPC and acquitted the accused from the charges levelled against him. I do not find any reason to interfere with the findings of the learned trial Judge, which is neither infirm nor illegal.

14. In the result, the revision is dismissed confirming the judgment of the learned Assistant Sessions Judge, Kallakurichi, in S.C.No.3 of 2003.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Assistant Sessions Judge, Kallakurichi.

2. Do Through The Principal Sessions Judge, Villupuram.

3.The Inspector of Police, Kallakurichi Police Station,
Kallakurichi.

4.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. V. Raghavachari, Advocate, SR No.33046
+ 1 cc to Mr. A. G. Rajan, Advocate, SR No.32951

NG(CO)
SR/15.6.2007

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